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9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against:

Case No. **2013-58**

14 **GARRY HARDWICK**
15 **31251 Paseo Olivos**
16 **San Juan Capistrano, CA 92675**

A C C U S A T I O N

17 **Registered Nurse License No. 755228**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
23 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
24 of Consumer Affairs.

25 2. On or about July 20, 2009, the Board of Registered Nursing issued Registered Nurse
26 License Number 755228 to Garry Hardwick (Respondent). The Registered Nurse License was in
27 full force and effect at all times relevant to the charges brought herein and will expire on June 30,
28 2013, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480;
or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be

1 conclusive evidence of the fact that the conviction occurred, but only of that fact,
2 and the board may inquire into the circumstances surrounding the commission of
3 the crime in order to fix the degree of discipline or to determine if the conviction
is substantially related to the qualifications, functions, and duties of the licensee in
question.

4 As used in this section, "license" includes "certificate," "permit,"
5 "authority," and "registration."

6 9. Section 2761 of the Code states:

7 The board may take disciplinary action against a certified or licensed
8 nurse or deny an application for a certificate or license for any of the following:

9 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

10
11 (f) Conviction of a felony or of any offense substantially related to the
12 qualifications, functions, and duties of a registered nurse, in which event the
record of the conviction shall be conclusive evidence thereof.

13
14 10. Section 2762 of the Code states:

15 In addition to other acts constituting unprofessional conduct within the
16 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
for a person licensed under this chapter to do any of the following:

17
18 (b) Use any controlled substance as defined in Division 10 (commencing
19 with Section 11000) of the Health and Safety Code, or any dangerous drug or
20 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
in a manner dangerous or injurious to himself or herself, any other person, or the
21 public or to the extent that such use impairs his or her ability to conduct with safety
to the public the practice authorized by his or her license.

22 (c) Be convicted of a criminal offense involving the prescription,
23 consumption, or self-administration of any of the substances described in
subdivisions (a) and (b) of this section, or the possession of, or falsification of a
24 record pertaining to, the substances described in subdivision (a) of this section, in
which event the record of the conviction is conclusive evidence thereof.

25
26 11. Section 2765 of the Code states:

27 A plea or verdict of guilty or a conviction following a plea of *nolo*
28 *contendere* made to a charge substantially related to the qualifications, functions

1 and duties of a registered nurse is deemed to be a conviction within the meaning
2 of this article. The board may order the license or certificate suspended or
3 revoked, or may decline to issue a license or certificate, when the time for appeal
4 has elapsed, or the judgment of conviction has been affirmed on appeal or when
5 an order granting probation is made suspending the imposition of sentence,
6 irrespective of a subsequent order under the provisions of Section 1203.4 of the
7 Penal Code allowing such person to withdraw his or her plea of guilty and to enter
8 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
9 accusation, information or indictment.

10 REGULATORY PROVISIONS

11 12. California Code of Regulations, title 16, section 1444, states:

12 A conviction or act shall be considered to be substantially related to the
13 qualifications, functions or duties of a registered nurse if to a substantial degree it
14 evidences the present or potential unfitness of a registered nurse to practice in a
15 manner consistent with the public health, safety, or welfare. Such convictions or
16 acts shall include but not be limited to the following:

- 17 (a) Assaultive or abusive conduct including, but not limited to, those
18 violations listed in subdivision (d) of Penal Code Section 11160.
- 19 (b) Failure to comply with any mandatory reporting requirements.
- 20 (c) Theft, dishonesty, fraud, or deceit.
- 21 (d) Any conviction or act subject to an order of registration pursuant to
22 Section 290 of the Penal Code.

23 13. California Code of Regulations, title 16, section 1445 states:

24

25 (b) When considering the suspension or revocation of a license on the
26 grounds that a registered nurse has been convicted of a crime, the board, in
27 evaluating the rehabilitation of such person and his/her eligibility for a license
28 will consider the following criteria:

- 29 (1) Nature and severity of the act(s) or offense(s).
- 30 (2) Total criminal record.
- 31 (3) The time that has elapsed since commission of the act(s) or
32 offense(s).
- 33 (4) Whether the licensee has complied with any terms of parole,
34 probation, restitution or any other sanctions lawfully imposed against the
35 licensee.
- 36 (5) If applicable, evidence of expungement proceedings pursuant
37 to Section 1203.4 of the Penal Code.
- 38 (6) Evidence, if any, of rehabilitation submitted by the licensee.

1 **COST RECOVERY**

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request
3 the administrative law judge to direct a licensee found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(November 1, 2011 Criminal Conviction for DUI on February 2, 2011)**

8 15. Respondent has subjected his registered nurse license to disciplinary action under
9 Code sections 490 and 2761, subdivision (f), in that he was convicted of a crime that is
10 substantially related to the qualifications, functions, and duties of a registered nurse. The
11 circumstances are as follows:

12 a. On or about November 1, 2011, in a criminal proceeding entitled *The*
13 *People of the State of California v. Garry Hardwick*, in Orange County Superior Court Harbor
14 Justice Center, Newport Beach Facility, case number 11HM04894, Respondent was convicted on
15 his plea of guilty of violating Vehicle Code (VC) section 23152, subdivision (b), driving with a
16 blood alcohol content (BAC) of 0.08 percent or more, a misdemeanor. Additional charges for
17 violation of VC section 23152, subdivision (a), driving under the influence of alcohol; a
18 misdemeanor, violation of VC section 20002, subdivision (a), hit and run with property damage,
19 a misdemeanor, and a sentencing enhancement pursuant to VC section 23538, subdivision (b) (2)
20 BAC was .20% or more, were dismissed as a result of a plea bargain.

21 b. As a result of the conviction, on or about November 1, 2011, Respondent
22 was sentenced to three years informal probation under the following terms and conditions: attend
23 and complete 9 month Level 2 First Offender Alcohol Program, pay fines and fees, pay
24 restitution; and comply with the terms of standard DUI probation.

25 c. The facts that led to the conviction are that on or about February 2, 2011,
26 Respondent drove his car into the back of another vehicle that was stopped at a red traffic signal
27 and caused minor property damage to the other car's rear bumper. The collision occurred at the
28 intersection of North Coast Highway and Aster Street in Laguna Beach, California. After the

1 collision, both drivers exited their cars and discussed the matter. Respondent accused the other
2 driver, B.S., of backing up into Respondent's car. B.S. recognized that Respondent appeared to
3 be intoxicated. B.S. took a picture of Respondent's license plate with his cell phone. Respondent
4 then drove his car away and fled the scene. B.S. reported the incident to the Laguna Beach Police
5 Department (LBPD). LBPD officers arrived at the crime scene and used the photo of
6 Respondent's license plate to locate Respondent's address. The officers then went to
7 Respondent's residence, noticed the strong odor of marijuana smoke emitting from Respondent's
8 residence, and knocked on the door. When Respondent replied to the officers' knock and opened
9 his door, the officers immediately smelled the strong odor of alcohol emitting from Respondent's
10 breath and noticed Respondent's bloodshot watery eyes. Respondent agreed to come outside to
11 the street and talk to the officers about the recent car accident involving Respondent's car.
12 Officer Lee noticed Respondent's extremely unsteady gait and slurred speech. Respondent
13 provided inconsistent answers to the officers' questions about the car accident. B.S. was brought
14 to where Respondent was being questioned and identified Respondent as the driver of the car that
15 drove into the back of his car. Respondent was unable to successfully perform any Field Sobriety
16 Tests as described by the officers. Respondent was arrested and transported to LBPD jail.
17 Respondent's blood sample taken at the LBPD jail indicated a BAC of .22%.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

20 16. Respondent has subjected his registered nurse license to disciplinary action under
21 section 2762, subdivision (b), of the Code, in that on or about February 2, 2011, as described in
22 paragraph 15, above, Respondent used alcoholic beverages to an extent or in a manner that was
23 dangerous and injurious to himself and to others when he operated a motor vehicle while
24 impaired with a significantly high blood alcohol concentration and drove his car into the back of a
25 car that was lawfully stopped at a solid red light.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Conviction of Alcohol Related Criminal Offenses)**

3 17. Respondent has subjected his registered nurse license to disciplinary action
4 under Code section 2762, subdivision (c), in that on or about November 1, 2011, as described in
5 paragraph 15, above, Respondent was convicted of a criminal offense involving the consumption
6 of alcohol.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

10 1. Revoking or suspending Registered Nurse License Number 755228, issued to Garry
11 Hardwick;

12 2. Ordering Garry Hardwick to pay the Board of Registered Nursing the reasonable
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions
14 Code section 125.3;

15 3. Taking such other and further action as deemed necessary and proper.

16
17
18 DATED: July 18, 2012

for Stacie Bern
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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